IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1204 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHANSING HARDIPSING KHALSA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1204 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR K.T.DAVE, AGP for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/09/2001

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, the petitioner/detenu who has been detained by the Commissioner of Police, Ahmedabad City, Ahmedabad

vide order dated February 5, 2001 (Annexure-A to the petition), in exercise of the powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), has assailed the order of detention on various grounds and prayed to issue writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and further prayed to set him at liberty forthwith.

2. The grounds of detention order dated February 5, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and he is carrying on the alleged anti-social activities pertaining to illegal business within the jurisdiction of Ahmedabad City. The detaining authority, therefore, relied upon one case under the Prohibition Act against the petitioner/detenue and the statements of two witnesses were recorded and therefore, according to the detaining authority his activities are prejudicial to maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority.

3. The petitioner has challenged the order of detention on various grounds. However, Mr. H.R.Prajapati, learned advocate for the petitioner has restricted his arguments to the effect that subjective satisfaction recorded by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. In order to substantiate his submissions he placed reliance on the statements of two witnesses recorded on February 3, 2001 which were verified by the detaining authority on the next day i.e. February 4, 2001 and immediately one day thereafter, order or detention came to be passed on February 5, 2001. Therefore, it can be said that the detaining authority has not exercised the powers under Section 9(2) of the Act properly as detaining authority had no sufficient time to examine the statements of witnesses.

4. Mr. K.T.Dave, learned AGP has opposed the petition by filing an Affidavit in reply which is sworn by Mr. P.C.Pandey, Commissioner of Police, Ahmedabad City, Ahmedabad. However, he does not dispute the factual aspect of verification of statements of two witnesses which were recorded on February 3, 2001 and verified by the detaining authority on the next date i.e. on February 4, 2001 and order of detention came to be passed on the next day i.e. February 5, 2001

5. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

6. A similar question arose in the case of KALIDAS C KAHAR VS. STATE 1993 (2) GLR 1659 in which proposal was made on October 16, 1992 and detention order was passed on October 17, 1992 and therefore, it was held to be a wrong exercise of power under Section 9(2) which has affected the detenu's right of making an effective representation under Article 22(5)of the Constitution and therefore, the detention order was quashed.

7. Applying the aforesaid principles laid down by this Court to the facts of the present case, it is clear that the present case is identical to the case referred above and here also statements of two witnesses were recorded on February 3, 2001 and verified by the detaining authority on February 4, 2001 and immediately one day thereafter i.e. on February 5, 2001, the detention order came to be pased. Therefore, order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

8. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned order of detention dated February 5, 2001 is hereby quashed and set-aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*